

EXHIBIT 13

1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
2 CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

3 COMPLEX LITIGATION UNIT

4 CASE NO.: 12-034123(07)

5 P&S ASSOCIATES, GENERAL PARTNERSHIP,
6 a Florida limited partnership, et al.,

7 Plaintiffs,

8 v.

9 MICHAEL D. SULLIVAN, et al.,

10 Defendants.

11 _____/
12 One Town Center Road
Suite 301

13 Boca Raton, Florida 33486

14 Wednesday, 10:10 a.m. - 12:59 p.m.

15 September 9, 2015

16 DEPOSITION OF FRANK AVELLINO

17 VOLUME 1 of 2

18 (Pages 1 through 143)

19
20
21 Taken on behalf of the Plaintiffs before
22 SUSAN MATOS, Court Reporter and Notary Public in and
23 for the State of Florida at Large, pursuant to
24 Plaintiffs' Third Re-Notice of Taking Videotaped
25 Deposition in the above cause.

1 APPEARANCES:

2 Attorneys for Plaintiffs

3
4 LEONARD K. SAMUELS, ESQUIRE
lsamuels@bergersingerman.com
STEVEN D. WEBER, ESQUIRE
5 sweber@bergersingerman.com
ZACHARY P. HYMAN, ESQUIRE
6 zhyman@bergersingerman.com
(Appeared telephonically.)
7 BERGER SINGERMAN LLP
350 East Las Olas Boulevard
8 Suite 1000
Fort Lauderdale, Florida 33301
9 (954)525-9900
10

11 THOMAS M. MESSANA, ESQUIRE
tmessana@messana-law.com
THOMAS G. ZEICHMAN, ESQUIRE
12 tzeichman@messana-law.com
MESSANA, P.A.
13 401 East Las Olas Boulevard
Suite 1400
14 Fort Lauderdale, Florida
(954)712-7400
15
16

Attorney for Defendant

17 Frank Avellino

18 GARY A. WOODFIELD, ESQUIRE
gwoodfield@haileshaw.com
19 HAILE SHAW & PFAFFENBERGER P.A.
660 U.S. Highway 1
20 Third Floor
North Palm Beach, Florida 33408
21 (561)627-8100
22
23
24
25

1 APPEARANCES CONTINUED:

2 Attorney for Defendant
Michael Bienes

3 JONATHAN ETRA, ESQUIRE

4 jetra@broadandcassel.com

Broad and Cassel

5 One Biscayne Tower, 21st Floor

Two South Biscayne Boulevard

6 Miami, Florida 33131

(305)373-9447

7
8
9
10
11
12
13
14
15 ALSO PRESENT:

16 Brian Terrinoni, Videographer

Philip von Kahle

1 A. Yes.

2 Q. And did -- did Madoff ever guarantee
3 Avellino & Bienes a certain rate of return on
4 investment?

5 A. No.

6 Q. Was Mr. Bienes also preclude by the SEC
7 from selling securities?

8 A. It was Avellino & Bienes. I'm assuming
9 that Bienes was part of it.

10 Q. And who was your counsel in that?

11 A. I think it was Lee Sorkin.

12 Q. Are you currently a defendant in an action
13 being brought by Irving Picard?

14 A. Yes.

15 Q. And have you had your deposition taken in
16 that case?

17 A. Not that I recall.

18 Q. And I want to ask you about a couple
19 allegations that are in that complaint concerning
20 documents and statements of Avellino & Bienes that
21 you said were reviewed by Price Waterhouse.

22 Did Bernie Madoff or anyone from his
23 company assist Avellino & Bienes in putting together
24 statements that were provided to the SEC?

25 A. Not that I recall.

1 Q. Are you aware of allegations being made by
2 Bernie Picard [sic] against Avellino & Bienes
3 that -- that Avellino & Bienes sent statements to
4 Bernie Madoff Investments so that Madoff and his
5 employees can alter them and conceal the original
6 statements from the SEC?

7 A. No. Nope. I'm not aware of it, no.

8 Q. Are you aware that -- that -- strike that.
9 And there's also an allegation that Bernie
10 Madoff created an entirely new set of account
11 statements for production to the SEC and/or the
12 receiver which eliminated certain transactions and
13 replaced them with other fictitious transactions
14 more consistent with the false testimony and
15 representations Avellino & Bienes made to the SEC.

16 Are you aware of that allegation?

17 A. No.

18 Q. And is that allegation true?

19 A. No.

20 Q. Okay. And so is the allegation that
21 Bernie Madoff -- Bernie Madoff's firm assisted in
22 preparing or altering statements to be provided by
23 Avellino & Bienes to the SEC, is that statement true
24 or false?

25 A. I don't know. I don't think so. No, it's

1 false.

2 Q. It's false?

3 A. Yeah.

4 Q. Did you personally oversee the statements
5 of Avellino and Bienes that were prepared and
6 provided to the SEC?

7 A. Over the years?

8 Q. During the investigation in 1990 -- 1991,
9 1992, 1993 time frame?

10 MR. WOODFIELD: Objection to the form of
11 the question as being vague or oversought.

12 Can you just clarify?

13 BY MR. SAMUELS:

14 Q. Do you understand the question?

15 A. It doesn't make sense. You said did I
16 prepare -- say it again. I...

17 Q. Were you involved in the preparation of
18 statements that were provided to the SEC in
19 conjunction with their investigation in the early
20 1990s?

21 A. Again, over the years. Not that day, not
22 that time. Over the years.

23 Q. I'm talking about the statements that were
24 presented to the SEC while they were investigating
25 Avellino & Bienes in 1992 --

1 A. I answer again --

2 Q. -- 1993 time frame.

3 A. -- over the years, all of the statements
4 were provided to the SEC. Those statements you're
5 indicating were part of it, then, yes, of course, I
6 did.

7 Q. And do you have knowledge of anyone from
8 Bernie Madoff's firm assisting Avellino & Bienes in
9 preparing statements or altering statements to be
10 provided to the SEC --

11 A. No.

12 Q. -- in connection with the investigation in
13 the early '90s?

14 A. No.

15 Q. So to the extent those allegations are
16 being made by Mr. Picard, you would either deny them
17 or say you have no knowledge of them?

18 A. No knowledge of them and I deny them
19 emphatically.

20 Q. Now, I intended originally when I spoke
21 about your depositions to go over some of the ground
22 rules of the deposition. We've gone a little far
23 before I did that, but I just want to do that now
24 anyway --

25 A. Sure.

1 there might have been positives.

2 Q. So did Mr. Madoff, in any given year, ever
3 have a negative return in all the years that you
4 were with him?

5 A. I can't recall.

6 Q. You don't recall any negative returns?

7 A. No. No, I don't.

8 Q. You can't recall whether he had a negative
9 return or you can't recall him having a negative
10 return?

11 A. I can't recall if he had a negative return
12 or whether he reported to us on securities a
13 negative return.

14 Q. In terms of Bernie Madoff's securities,
15 was that -- could anyone from the public invest with
16 Mr. Madoff?

17 A. I'm assuming so.

18 Q. Do you know if you had to be referred to
19 Mr. Madoff in order to open an account?

20 A. I don't know.

21 Q. Did Mr. Madoff ever tell you what rate of
22 return you would receive when you began investing
23 with him?

24 A. No.

25 Q. Did there ever come a time when you were

1 And the question is?

2 BY MR. SAMUELS:

3 Q. The question is: This is a letter from
4 Avellino & Bienes to Ms. Gianna indicating that she
5 would receive an annual rate of 15 percent
6 compounded quarterly, correct?

7 A. Yes.

8 Q. Okay. Now, in the next page we have a
9 letter to note holder indicating that enclosed
10 you'll find a check representing your total
11 principal note amount of Avellino & Bienes plus
12 interest on that note as of November 16, 1992. This
13 check is being sent to you as a result of a consent
14 between Avellino & Bienes and the Securities
15 Exchange Commission requiring this redemption of
16 your donated interest.

17 Do you see that?

18 A. Yes.

19 Q. Okay. Did Avellino & Bienes return all of
20 the principal amounts on their notes plus interest
21 to all of its investors who had notes?

22 A. Yes.

23 Q. Okay. And was the money provided to
24 Avellino & Bienes by Madoff or anyone on his behalf?

25 A. It came from Madoff's office.

1 Q. Madoff's office sent you the money?

2 A. Yes.

3 Q. Okay. And do you know how Madoff's office
4 got the money to return to you?

5 A. I have no clue.

6 Q. Did you make any inquiry how they were
7 able to get all the money back?

8 A. At that point, I didn't care.

9 Q. Did you ever come to learn that the money
10 provided Mr. Madoff to pay you back came from
11 Mr. Picower?

12 A. No.

13 Q. At any point in time did you ever learn
14 that?

15 A. No.

16 Q. So sitting here today, you're unaware of
17 that.

18 A. No.

19 Q. Do you know how Mr. Sullivan --
20 Mr. Sullivan came to be an investor or someone who
21 provided investors to Avellino & Bienes?

22 A. I'm assuming he knew me and saw the way I
23 lived. I was never around, but the way I lived, and
24 from the church group, must have talked.

25 Q. Did you ever tell Mr. Sullivan that you're

1 A. I can't remember. Why would I pay? I
2 don't know. I don't think so.

3 Q. Okay. And have you ever paid any of his
4 legal expenses or costs in connection with this
5 lawsuit or anything having to do with S&P or P&S?

6 A. No.

7 Q. When is the last time you've spoken to
8 Mr. Sullivan?

9 A. I can't even recall.

10 Q. Was it less than a year ago?

11 A. Not that I -- no, I don't think so.

12 Q. Have you ever had discussions with
13 Mr. Sullivan about this lawsuit?

14 A. No.

15 Q. Has Mr. Sullivan ever discussed with you
16 any discussions he may have had with Mr. von Kahle
17 or my office or any of Mr. von Kahle's lawyers?

18 A. No.

19 Q. Going back to your relationship with
20 Mr. Madoff, how often did you go up to New York to
21 meet with Mr. Madoff during the time frame of, let's
22 say, when you were operating Avellino & Bienes down
23 here in South Florida?

24 A. I can't recall.

25 Q. Was it frequent?

1 A. No.

2 Q. But you do recall going up to meet with
3 Mr. Madoff?

4 A. I went there once, that I recall. But
5 that was it.

6 Q. During that time frame?

7 A. It was 2004, maybe.

8 Q. And what caused you to go up and meet
9 Mr. Madoff in 2004?

10 A. Probably estate planning.

11 Q. And why would you be meeting with
12 Mr. Madoff about estate planing?

13 A. He had all my money.

14 Q. Okay. And how about after -- how about
15 any other times you went up to New York to meet
16 Mr. Madoff?

17 A. No.

18 Q. Did you ever have working lunches with
19 Mr. Madoff in Mr. Madoff's office?

20 A. No.

21 Q. Did you ever have closed-door meetings
22 that lasted hours with Mr. Madoff?

23 A. No.

24 Q. What is the most amount of money that you,
25 directly or indirectly through your entities, had